

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

DSM DESOTECH, INC.,)	
)	
Plaintiff,)	Civil Case No. 08 C 1531
)	
v.)	Judge Lefkow
)	Magistrate Judge Keys
3D SYSTEMS CORPORATION and)	
3D SYSTEMS, INC.,)	
)	
)	
Defendants.)	

**PLAINTIFF'S ANSWER TO DEFENDANT 3D SYSTEMS INC.'S
COUNTERCLAIM FOR DECLARATORY JUDGMENT**

Plaintiff DSM Desotech Inc. ("Desotech"), by and through its attorneys, Mayer Brown LLP and Leydig, Voit & Mayer, Ltd., as for its answer to the Counterclaim for Declaratory Judgment of Defendant 3D Systems, Inc., hereby alleges and avers, on personal knowledge as to allegations concerning itself and upon information and belief as to all other allegations, as follows:

THE PARTIES

Counterclaim:

1. 3D California [sic] is a California corporation, having a place of business at 333 Three D Systems Circle, Rock Hill, South Carolina 29730.

Answer:

1. Desotech admits on information and belief that 3D Systems, Inc. is a California corporation and has a place of business at 333 Three D Systems Circle, Rock Hill, South Carolina 29730. Desotech points out that 3D Systems, Inc. refers to itself as 3D California in its

answer to the complaint, and in this counterclaim. For purposes of its Answer, Desotech has assumed that 3D California is 3D Systems, Inc.

Counterclaim:

2. Upon information and belief, Desotech is a Delaware corporation with a principal place of business at 1122 St. Charles Street, Elgin, Illinois 60120.

Answer:

2. Admitted.

JURISDICTION AND VENUE

Counterclaim:

3. This action is brought under the Declaratory Judgment Act, 28 U.S.C. §§ 2201-02, and arises under the Patent Laws of the United States, 35 U.S.C. §§ 1 *et seq.*

Answer:

3. Admitted that the counterclaim purports to assert an action for declaratory judgment pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201-02, and arises under the Patent Laws of the United States, 35 U.S.C. §§ 1 *et seq.* Otherwise, denied.

Counterclaim:

4. Subject matter jurisdiction is conferred upon this Court by 28 U.S.C. § 1338(a).

Answer:

4. Admitted.

Counterclaim:

5. Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391(c) and by virtue of the fact that Desotech has filed a patent infringement action against 3D California in this Judicial District.

Answer:

5. Admitted.

BACKGROUND FACTS

Counterclaim:

6. 3D California has been sued by Desotech in the present action for infringing U.S. Patent Nos. 6,340,297 (the “297 Patent”) and 6,733,267 (the “267 Patent”) alleged to be owned by Desotech.

Answer:

6. Admitted that the ‘297 and ‘267 patents are owned by Desotech with full rights to sue for current and past infringement. Admitted that Desotech filed suit against 3D Systems, Inc., and against 3D Systems Corporation, for infringement of the ‘297 and ‘267 patents. Otherwise, denied.

CLAIM 1 **Declaration of Noninfringement, Invalidity & Unenforceability**

Counterclaim:

7. 3D California repeats and incorporates herein the foregoing allegations in paragraphs 1-6 as if set forth in their entirety.

Answer:

7. Desotech repeats and incorporates herein its responses to the answered paragraphs above as if set forth fully herein.

Counterclaim:

8. By virtue of the filing of the patent infringement complaint against 3D California, under all of the circumstances, there is a substantial, actual, and justiciable controversy between 3D California, on the one hand, and Desotech, on the other hand, of sufficient immediacy and reality as to infringement of the Desotech ‘297 and ‘267 patents such that a justiciable Article III controversy exists.

Answer:

8. Admitted.

Counterclaim:

9. 3D California does not infringe, induce infringement of, and/or contributorily infringe, and has not infringed, induced infringement of, and/or contributorily infringed any valid and enforceable claim of the Desotech '297 and '267 patents.

Answer:

9. Denied.

Counterclaim:

10. By virtue of amendments, arguments, and/or admissions made by and/or on behalf of the alleged inventors and/or owners of the '297 and '267 Patents, 3D California does not infringe the Desotech '297 and '267 patents either literally or under the doctrine of equivalents.

Answer:

10. Denied.

Counterclaim:

11. The Desotech '297 and '267 patents are invalid and void for failure to comply with one or more sections of Title 35 of the U.S. Code, including, without limitation, 35 U.S.C. §§ 101, 102, 103, and/or 112.

Answer:

11. Denied.

Counterclaim:

12. The '297 and '267 Patents are unenforceable by the doctrine of prosecution laches due to the unreasonable delay in seeking issuance of the '297 and '267 Patents, each of which claim initial priority from U.S. Application No. 07/488,095, which was filed on March 1, 1990.

Answer:

12. Denied.

PRAYER FOR RELIEF

WHEREFORE, Desotech prays that this Court:

- A. Enter a judgment that 3D Systems, Inc. has infringed United States Letters Patent 6,340,297;
- B. Enter a judgment that 3D Systems, Inc. has infringed United States Letters Patent 6,733,267;
- C. Enter a judgment that United States Letters Patent 6,340,297 is not invalid or otherwise unenforceable;
- D. Enter a judgment that United States Letters Patent 6,733,267 is not invalid or otherwise unenforceable;
- E. Award Desotech damages, interest and costs pursuant to 35 U.S.C. § 284 for 3D Systems, Inc.'s patent infringement;
- F. Award Desotech on its patent infringement claim enhanced damages and its attorneys' fees pursuant to 35 U.S.C. §§ 284 and 285;
- G. Enjoin 3D Systems, Inc. from engaging in the infringing conduct alleged herein;
- H. All such other and further relief that this Court deems just and proper.

Dated: June 25, 2008

Respectfully submitted,

By: /s/ Jeffrey B. Burgan

Andrew S. Marovitz
Britt M. Miller
Thomas V. Panoff
MAYER BROWN LLP
LEYDIG, VOIT & MAYER, LTD.
71 South Wacker Drive
Chicago, Illinois 60606
(312) 782-0600
(312) 701-7711 – fax

Bruce M. Gagala
Jeffrey B. Burgan
LEYDIG, VOIT & MAYER, LTD.
Two Prudential Plaza, Suite 4900
180 North Stetson Avenue
Chicago, Illinois 60601
(312) 616-5600
(312) 616-5700 – fax

ATTORNEYS FOR PLAINTIFF DSM DESOTECH INC.

CERTIFICATE OF SERVICE

I, Jeffrey B. Burgan, an attorney for Plaintiff, hereby certify that on June 25, 2008, I caused a true and correct copy of the foregoing **PLAINTIFF'S ANSWER TO DEFENDANT 3D SYSTEMS, INC.'S COUNTERCLAIM FOR DECLARATORY JUDGMENT**, to be filed electronically and served electronically. Notice of this filing will be sent by e-mail to all parties by operation of the court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the court's CM/ECF System. Parties served electronically:

Michael Sennett
Paula W. Render
JONES DAY
77 West Wacker Drive, Suite 3500
Chicago, IL 60601

Sidney David
Jonathon A. David
LERNER DAVID LITTENBERG KRUMHOLZ & MENTLIK, LLP
600 South Avenue West
Westfield, NJ 07090-1497

/s/ Jeffrey B. Burgan
Jeffrey B. Burgan
Two Prudential Plaza, Suite 4900
180 North Stetson Avenue
Chicago, IL 60601
E-mail: jburgan@leydig.com